UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2895

September Term, 2015

RICHARD LAWTON McLEOD

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

In 1992, following a jury trial in the Circuit Court for Prince George's County, Richard Lawton McLeod, appellant, though acquitted of first-degree premeditated murder, was convicted of felony murder for the commission of a homicide during an attempted rape. McLeod was thereafter sentenced to life imprisonment without the possibility of parole. Twenty-two years after his conviction was affirmed on appeal, *Richard Lawton McLeod v. State of Maryland,* No. 1893, Sept. Term, 1992 (filed June 21, 1993), *cert. denied,* 332 Md. 454 (1993),[1] McLeod filed a motion to correct an illegal sentence, claiming that he was unlawfully convicted, and hence his sentence was illegal, because the indictment did not specifically charge him with "felony murder" and because he was never indicted for or convicted of attempted rape, the underlying felony. After the circuit court denied that motion, McLeod noted this appeal. For the reasons to be discussed, we affirm.[2]

The State used the statutory "short form" indictment to charge McLeod with murder. At the time, the statute provided:

> In any indictment for murder or manslaughter, or being an accessory thereto, it shall not be necessary to set forth the manner or means of death. It shall be sufficient to use a formula substantially to the following effect: "That A.B., on the . . . . day of . . . nineteen hundred and . . . , at the county aforesaid, **feloniously (willfully and**

[1] This Court affirmed the conviction but vacated the sentence for felony murder and remanded for resentencing. The circuit court then resentenced McLeod to life without the possibility of parole. McLeod appealed and this Court affirmed. *Richard Lawton McLeod v. State of Maryland,* No. 1561, Sept. Term, 1993 (filed August 26, 1994), *cert. denied,* 337 Md. 43 (1994).

[2] The State moves to dismiss the appeal because of "the absence of a complete transcript of the trial and sentencing hearings leading to the putatively illegal sentence." The record transmitted to us by the circuit court includes those transcripts. The State's motion to dismiss is therefore denied.

> **of deliberately premediated malice aforethought) did kill (and murder)** C.D. against the peace, government and dignity of the State."

Article 27, § 616 (Md. Code, 1992 Repl. Vol.) (Emphasis added.) [3]

Count One of the indictment filed in McLeod's case read, in pertinent part, as follows:

> that Richard Lawton McLeod late of Prince George's County, aforesaid, on or about the 10th day of August, 1987, at Prince George's County aforesaid, **feloniously, willfully and of his deliberately premediated malice aforethought, did kill and murder Jacquilin Rose Roberson**, in violation of the Common Law of Maryland, and against the peace, government and dignity of the State. (Murder)

(Emphasis added.)

McLeod claims that, because the indictment did not include a separate count, specifically charging him with "felony murder," he could not be tried and convicted for that offense. But that claim is without merit as in *Ross v. State*, 308 Md. 337 (1987), several years before McLeod was indicted, the Court of Appeals rejected a similar claim, holding that the statutory short form indictment for murder is sufficient to charge a defendant with first-degree premediated murder and felony murder. *Id.*, at 341-342 (1987). In so holding, the Court of Appeals noted that "a conviction of first degree murder may be proved *either* by showing deliberation, willfulness and premeditation (premeditated murder), or by showing a homicide committed in the perpetration, or attempted

[3] This provision, in substantially the same form, is presently codified as Section 2-208 of the Criminal Law Article of the Maryland Code (2012 Repl. Vol.).

perpetration, of one of the enumerated felonies (felony murder)."[4] *Id.* at 341-342. Although first degree murder "may be proved" by either modality, the Court of Appeals in *Ross* stated that "[t]here is no requirement [ ] that a charging document must inform the accused of the specific theory on which the State will rely." *Id.* at 344. In short, Count One of McLeod's indictment properly charged him with first-degree murder, which the State was free to prove was committed with premeditation and malice aforethought or in the attempted perpetration of a felony, such as rape.

McLeod also maintains that the jury rendered a "split verdict" by finding him not guilty of premeditated murder but guilty of felony murder, and because both offenses were charged in the same count, that was somehow illegal. He asserts that, "[s]ince premeditated murder and felony murder are unrelated," "they could not both be in the same count of the same indictment." For the reasons noted above, this contention is also without merit. *See Ross,* 308 Md. at 341-342 ("There is but one offense – murder in the first degree – but that offense may be committed in more than one way.").

Finally, McLeod asserts that his conviction for felony murder is illegal because he was not charged with the underlying felony (attempted rape in the first or second-degree) and because the jury did not convict him of the underlying felony. In *Adams v. State*, 8 Md. App. 684, *cert. denied,* 285 Md. 725 (1970), *cert. denied,* 400 U.S. 928 (1970), this Court rejected a similar claim. There we stated:

[4] A murder committed in the course of committing (or attempting to commit) certain enumerated felonies, including rape, is a "felony murder," that is, murder in the first degree. *See* Crim. Law, § 2-201(a) and former Art. 27, § 410.

> The State need only prove the facts that show a felony was committed by the accused which resulted in a killing in order to obtain a legal conviction. There is no necessity for the State to indict and convict the accused of the underlying felony [robbery] to sustain a conviction of murder in the first degree [felony murder].

8 Md. App. at 691. *See also Mumford v. State,* 19 Md. App. 640, 643 (1974) ("There is no further requirement upon the State that it indict and convict upon that underlying felony in order to sustain a felony-murder prosecution."); *Wood v. State,* 191 Md. 658, 667 (1948) (same).

Here, the trial court properly instructed the jury on the elements of felony murder, including that a conviction required a finding that McLeod had committed an attempted rape in the first or second-degree when the killing occurred. The court further instructed the jury on the elements of first and second-degree rape. On direct appeal, this Court held that the evidence was sufficient to submit the issue to the jury. *McLeod v. State,* No. 1893, Sept. Term, 1992, slip op. at 4-5. In sum, McLeod's conviction for felony murder was lawful and so is his sentence.

APPELLEE'S MOTION TO DISMISS THE APPEAL DENIED. JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.